



**ELIAS MOTSOLEDI LOCAL MUNICIPALITY**

**SUPPLY CHAIN MANAGEMENT AND PREFERENTIAL  
PROCUREMENT POLICIES 2018/19 FINANCIAL YEAR**

**This policy consists of three parts:**

- **Part A** is the **Supply Chain Management Policy**, adopted in terms of section 111 of the Local Government: Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005;

and

- **Part B** is the **Preferential Procurement Policy**, adopted in terms of the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations 2017;

and

- **Part C** is the **Supply Chain and Preferential Procurement Guidelines**.

## PART A

### MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

The Council of the Elias Motsoaledi Local Municipality (EMLM) resolves in terms of section 111 of the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003) to adopt the following as the Supply Chain Management Policy of the municipality:

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## DEFINITIONS

1. in this Policy, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

**“COMPETITIVE BIDDING PROCESS”** means a competitive bidding process referred to in paragraph 12(1) (c) of this Policy;

**“COMPETITIVE BID”** means a bid in terms of a competitive bidding process;

**“FINAL AWARD”**, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“FORMAL WRITTEN QUOTATION”** means quotations referred to in paragraph 12(1) (b) of this Policy;

**“IN THE SERVICE OF STATE”** means to be –

- (a) A member of –
  - (i) Any municipal council;
  - (ii) Any provincial legislature; or
  - (iii) The National Assembly or the National Council of Provinces;
- (b) A member of the board of directors of any municipal entity;
- (c) An official of any municipality or municipal entity;
- (d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No 1 of 1999);
- (e) A member of the accounting authority of any national or provincial public entity; or
- (f) An employee of Parliament or a provincial legislature;

**“LONG TERM CONTRACT”** means a contract with a duration period exceeding one year;

**“list of accredited prospective providers”** means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of regulation 14

**“OTHER APPLICABLE LEGISLATION”** means any other legislation applicable to municipal supply chain management, including –

- (a) The Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
- (b) The Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003);
- (c) The Construction Industry Development Board Act, 2000 (Act No 38 of 2000); and

**“REGULATIONS”** means the Local Government: Municipal Finance Management Act, 2003, Municipal Supply Chain Management Regulations;

**“TREASURY GUIDELINES”** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

**“THE ACT”** means the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003); and

**“WRITTEN or VERBAL QUOTATION”** means quotations referred to in paragraph 12(1) (b) of this Policy.

## **CHAPTER 1**

### **ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

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#### **(a) Introduction**

The purpose of this document is to set forth the policy of ELIAS MOTSOALEDI LOCAL MUNICIPALITY, with respect to procurement procedures and related contractual agreements, entered into by all departments for work and products/services with natural or legal entities, and to provide for the documentation to support such decisions. The term “procurement” includes products / services to include goods and services purchased or leased, used interchangeably, or it may refer to issuing a purchase order.

Section 1.02 ELIAS MOTSOLEDI LOCAL MUNICIPALITY is transforming its supplier interactions over the whole spectrum of its Procurement / Supply Chain processes. The objective is to establish a competitive advantage through the procurement of world class product / services which meet the needs of ELIAS MOTSOLEDI LOCAL MUNICIPALITY and its divisions/departments at the best possible Total Cost of Ownership (TCO).

(a) Statement of Policy

1.1 It is ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy to source and procure quality products / services at the optimal Total Cost of Ownership and to award business on the basis of merit, based on those criteria and conditions as set forth by ELIAS MOTSOLEDI LOCAL MUNICIPALITY to qualified suppliers.

1.2 In pursuit of this objective, ELIAS MOTSOLEDI LOCAL MUNICIPALITY will be guided by the requirements of Government Policy, including a policy to establish and support a competitive and viable base of suppliers and to support the needs of the development of Black Economic Empowerment.

1.3 ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy will be guided by the following South African Acts, their mandates and dictates:

- Preferential Procurement Policy Framework Act, No 5 of 2000 (PPFPA);
- Municipal Finance Management Act, 1999 (MFMA);
- Public Service Act, 1994 (Act No 103 of 1994) (PSA);
- The National Treasury's Supply Chain Management Guidelines; and
- The Broad-based Black Economic Empowerment Act, Act No 53 of 2003.
- CIDB Act 38 of 2000

1.4 ELIAS MOTSOLEDI LOCAL MUNICIPALITY's policy is to support the PROUDLY SOUTH AFRICAN PROGRAMME.

1.5 All purchases shall be authorized and executed as per the Delegation of Authority as amended from time to time.

1.6 Purchasing activity will be performed in accordance with the Procurement Responsibilities

## **2. Principles and pledges**

2.1 The principles of this Policy are that it -

- (a) Gives effect to –
- (i) Section 217 of the Constitution; and
  - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (iii) Is fair, equitable, transparent, competitive and cost effective;
  - (iv) Complies with the Regulations; and any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (b) Is consistent with other applicable legislation;

- (c) Does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- (d) Is consistent with national economic policy concerning the promotion of investments and doing business with the public sector;.

(i) Confirms that ELIAS MOTSOLEDI LOCAL MUNICIPALITY's empowerment procurement policy is underpinned by its support for the policy of National Government:

- i. that black economic empowerment should be seen as integral with, related to and complementing the economic growth of South Africa;
- ii. to pursue a broad-based empowerment drive that will effectively deracialise the South African economy and fast-track the inclusion of marginalized people in the mainstream economy

2.2 The supply chain management policy of a municipal entity must, in addition to complying with subregulation (1), and to the extent determined by the parent municipality, also be consistent with the supply chain management policy of the parent municipality. If the supply chain management policy of an entity is not consistent with the supply chain management policy of its parent municipality, the council of the parent municipality must take appropriate steps to ensure consistency.

2.3 No municipality or municipal entity may act otherwise than in accordance with its supply chain management policy when –

- (a) procuring goods or services;
- (b) disposing of goods no longer needed;
- (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or in the case of a municipality, selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

2.4 Subregulations (1), (2) and (3) do not apply in the circumstances described in section 110(2) of the Act except where specifically provided otherwise in these

### **3. Adoption and amendment of the Supply Chain Management Policy**

3.1 The Accounting Officer must –

At least annually review the execution of provisions contained in this Policy;

And when the Accounting Officer considers it necessary, submit proposals for the amendment of this Policy to the Council. If the Accounting Officer submits a draft policy to the Council that differs from the model policy issued by the National Treasury, the Accounting Officer must –

- Ensure that such draft policy complies with the Regulations; and
- Report any deviation from the model policy to the National Treasury and the relevant provincial treasury.

3.2 When amending this Policy the need for uniformity in supply chain practices, procedures, and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses must be taken into account.



- 3.3 The Accounting Officer must, in terms of section 62(1) (f) (IV) of the Act, take all reasonable steps to ensure that the municipality has and implements this Supply Chain Management Policy.

#### **4. Delegation of supply chain management powers and duties**

- 5.1 The Council hereby delegates and is required to further delegate such additional powers and duties to the Accounting Officer so as to enable the Accounting Officer –
- i. To discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Act and this Policy;
  - ii. To maximise administrative and operational efficiency in the implementation of this Policy;
  - iii. To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
  - iv. To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- 5.2 Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to the Accounting Officer in terms of paragraph 4(1) of this Policy.
- 5.3 The Council or Accounting Officer may not delegate or sub delegate any supply chain management powers or duties to a person who is not an official of the municipality or to a committee which is not exclusively composed of officials of the municipality.
- 5.4 This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 27 of this Policy.

#### **5. Sub delegations**

**(1)** The Accounting Officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the Accounting Officer in terms of this Policy, but any such sub delegation must be consistent with paragraph 4 and paragraph 5(2) of this Policy.

**(2)** The power to make a final award –

- a) Above R10 million (VAT included) may not be sub delegated by the accounting officer;
- b) Above R2 million (VAT included), but not exceeding R 10 million(VAT included), may be sub delegated but only to –
  - I. The chief financial officer;
  - II. A senior manager; or
  - III. A bid adjudication committee of which the chief financial officer or a senior manager is a chairperson; or

- c) Not exceeding R 2 million (VAT included) may be sub delegated but only to –
  - I. The chief financial officer;
  - II. a senior manager;
  - III. a manager directly accountable to the chief financial officer or a senior manager; or
  - IV. a bid adjudication committee.

**(3)** An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five) days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

- (a) The amount of the award;
- (b) The name of the person to whom the award was made; and
- (c) The reason why the award was made to that person.

**(4)** A written report referred to in subparagraph (2) must be submitted –

- a) To the accounting officer, in the case of an award by –
  - (i) The chief financial officer;
  - (ii) A senior manager; or
  - (iii) A bid adjudication committee of which the chief financial officer or a senior manager is a member; or
- b) To the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
  - (i) A manager referred to in subparagraph (2)(c)(iii); or
  - (ii) A bid adjudication committee of which the chief financial officer or a senior manager is not a member.

**(5)** Subregulations (3) and (4) of this policy do not apply to procurements out of petty cash.

**(6)** This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

**(7)** No supply chain management decision-making powers may be delegated to an advisor or consultant.

## 6. Oversight role of council of municipality or board of directors of municipal entity

1. The council of a municipality must maintain oversight over the implementation of its supply chain management policy.
2. For the purposes of such oversight the accounting officer must –
  - (a) (i) in the case of a municipality, within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality to the council of the municipality;
  - (ii) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council of the municipality.
3. The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor of the municipality.
4. The reports of a municipality must be made public in accordance with section 21A of the Municipal Systems Act. The reports of a municipal entity must be made public in a similar way.

## 7. Range of procurement processes

- (1) Goods and services may only be procured by way of –
  - (a) Petty cash purchases, up to a transaction value of R1 000 (VAT included) and at least one written quotation, Verbal quotations are prohibited
  - (b) One written quotation for the procurement of transaction value of R1 000.00 or less.
  - (c) At least two written quotations for the procurement of a transaction value from R2000.00 up to R5 000 (VAT included);
  - (d) Three formal written price quotations for procurements of a transaction value over R5 000 up to R30 000 (VAT included); and
  - (e) from R30 000.00 to R200 000.00 tenders will be advertised through the Municipal Website & Municipal Public Notice Boards
  - (f) **Procurement transactions from R30 000.00 to R200 000.00 (VAT included) must be evaluated by the Supply Chain Management Practitioner and be reviewed by the Manager Supply chain Management and further be recommended by the Chief Financial Officer to the Accounting officer for approval;**
  - (g) a competitive bidding process for–
    - (i) **Procurements above a transaction value of R200 000 (VAT included) will be tenders; and**
    - (ii) The procurement of long term contracts.

- (2) The accounting officer may, in writing-
- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
  - (b) Direct that –
    - (i) Written quotations be obtained for any specific procurement of a transaction value lower than R1 000.00;
    - (ii) At least two formal written price quotations be obtained for any specific procurement of a transaction value lower than R5 000;
    - (iii) Three formal price quotations must be obtained for any specific procurement of transactions value from R5000 to R30 000
    - (iv) from R30 000.00 to R200 000.00 tenders will be advertised through the Municipal Website & Municipal Public Notice Boards
    - (v) ***A competitive bidding process be followed for any specific procurement of a transaction value more than R200 000.***
- c) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

PROCESS	VALUE	ADVERTISEMENT
Petty Cash Purchases	Up to R1 000.00 [VAT included] at least one written quotation	No
Formal Written Quotations	Over R1001 – R5 000.00 [VAT included] at least two written quotation	No
Formal Written Quotations	Over R5001 – R30 000.00 [VAT included] three written quotation must be obtained	No
Formal Written Price Quotations	Over R30 001 [VAT included] up to R 200 000 [VAT included]	Yes Municipal notice boards and website 7 days.
Competitive Bidding	Over R 200 001 [VAT included] or Long Term Contracts not exceeding one [1] year	Yes News paper , Municipal notice boards and CIDB for 14 days
	Over R 200 001 [VAT included] or Long Term Contracts exceeding one [1] year	Yes News paper , Municipal notice boards and CIDB for 30 days

## **.8.Training of supply chain management officials**

The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training.

## **CHAPTER 2**

### **FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT SYSTEM**

#### **1. INTRODUCTION**

ELIAS MOTSOLEDI LOCAL MUNICIPALITY's Procurement Policy framework sets out the philosophy behind the adoption of an integrated procurement function and will assist stakeholders to understand the responsibilities this implies. This document explains the impact of the changes for employees holding delegated authority and stakeholders at each step of the procurement cycle.

This policy framework is intended to facilitate a general understanding of the changes to the procurement practices. It must be seen as a step to assist ELIAS MOTSOLEDI LOCAL MUNICIPALITY in the smooth implementation of procurement practices within their departments. The policy will be supplemented on a regular basis to keep abreast as the development of the procurement management function within ELIAS MOTSOLEDI LOCAL MUNICIPALITY

#### **9. Format of supply chain management system**

This Policy provides systems for –

- (i) Demand management;
- (ii) Acquisition management;
- (iii) Logistics management;
- (iv) Disposal management;
- (v) Risk management; and
- (vi) Performance management.

#### ***Part 1: Demand management***

#### **10. System of demand management**

- (1) The Accounting Officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.
- (2) The demand management system must -
  - (a) include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
  - (b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
  - (c) Provide for the compilation of the required specifications to ensure that its needs are met.
  - (d) Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximised.

## ***Part 2: Acquisition management***

### **System of acquisition management**

**11.**

- (1) an effective system of acquisition management must be established in order to ensure that –
  - (a) Goods and services are procured by the municipality in accordance with authorised processes only;
  - (b) Expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) The threshold values for the different procurement processes are complied with;
  - (d) Bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) Any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
  - (a) Water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) Electricity from ESKOM or another public entity, another municipality or a municipal entity.
- (3) The following information must be made public wherever goods or services contemplated in section 110(2) of the Act are procured other than through the supply chain management system -
  - (a) The kind of goods or services; and
  - (b) The name of the supplier.

### **12. General preconditions for consideration of written quotations or bids**

- (1) A written quotation or bid may not be considered unless the provider who submitted the quotation or bid –
  - (a) Has furnished that provider's –
    - (i) Full name;
    - (ii) Identification number or company or other registration number;
    - (iii) The central supplier database summary report indicating tax reference number and VAT registration number, if any; and are in order Tax clearance from the South African Revenue Services that the provider's tax matters; and

- b) Has indicated –
  - I. Whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
  - II. if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
  - III. Whether a spouse, child, or parent of the provider or of a director, manager, shareholder, or stakeholder referred to in paragraph 13(b) (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

### **13. Supplier Selection/Certification**

#### **Lists of accredited prospective providers**

- 1. The Accounting Officer must –
  - (a) At least once a year through newspapers commonly circulating locally, the municipality's website and any other appropriate ways, invite prospective providers of goods or services to apply for listing as accredited prospective providers;
  - (b) Specify the listing criteria for accredited prospective providers which must include at least the requirement to submit proof of compliance with:-
    - (i) SARS tax registration;
    - (ii) Municipal rates and tax payments; and
  - (2) The list must be updated timeously to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
  - (3) The list must be compiled per commodity and per type of service.
  - (4) **Prospective provider's compliance matters must be in accordance with the listing criteria as per the National Treasury Central Supplier Database.**

### **14 .Petty cash purchases (< R1000)**

- (1) The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 7 (1) (a) of this policy, are that minor items are purchased for up to R1000, 00 (VAT included) where it is impractical, impossible or not cost-effective to follow the official procurement process and is strictly of a reimburse nature and not for advances.
- (2) A monthly reconciliation report from each manager must be provided to the Chief Financial Officer, including –
  - (i) The total amount of petty cash purchases for that month; and
  - (ii) Receipts and appropriate documents for each purchase.

### **15. Verbal quotations prohibited**

No orders may be placed based on verbal price quotations.

### **16 . Formal Written Price Quotations (> R1000 < R30 000)**

- (1) the conditions for the procurement of goods or services through written quotations, are as follows-

- (a) Quotations must be obtained in writing from at least two for (R1000 – R5000) and three quotes for (R5001 – R30 000) different providers whose names appear on the list of accredited prospective providers of the municipality;
  - (b) Quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy;
  - (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Accounting Officer and Chief Financial Officer or an official designated by the chief financial officer, and be registered in the deviation register.
  - (d) The accounting officer or his nominee must record the names of the potential providers and their written quotations.
  - (e) All invitations for quotations should be selected from the central supplier database
- (2) A designated official referred to in subparagraph (1) (c) must within (Ten) 10 working days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

## **17. Formal written price quotations**

- (1) the conditions for the procurement of goods or services through formal written price quotations are as follows:-
- (a) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality.
  - (b) In a case where by in our database we don't we don't have a provider who provide the service or goods required we can only select a provider who is not register however the deviation must be approved by the Municipal Manager and be registered in the deviations register;
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer; and
  - (d) that the accounting officer must record the names of the potential providers and their written quotations; and
- (2) The designated official referred to in paragraph 18(1) (c) must within three (3) working days of the end of each month report to the Chief Financial Officer on any approvals given during that month by that official in terms of that paragraph.

## **18. Procedures for procuring goods or services through formal written or verbal quotation and formal written price quotation**

The procedure for the procurement of goods or services through formal written quotations, are as follows:-

- (a) When using the list of accredited prospective providers the buying officer must promote on-going competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written quotations must, in addition, be advertised for at least seven days on the website and the official notice boards of the municipality
- (c) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused



- (d) The Buying officer must take all reasonable steps to ensure that the procurement of goods and services through formal written price quotations is not abused;
- (e) the Accounting Officer or Chief Financial Officer must on a monthly basis be notified in writing of all informal and formal written quotations accepted by an official acting in terms of a sub delegation;
- (f) The Chief Financial Officer must set requirements for proper record keeping of all formal written quotations accepted on behalf of the municipality.

## **19. Competitive bidding process (R200 000 AND OVER)**

- (a) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process
- (b) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

## **20. Process for competitive bidding**

The procedures for the following stages of a competitive bidding process are as follows:-

- (a) Compilation of bidding documentation
- (b) Public invitation of bids
- (c) Site meetings or briefing sessions
- (d) Handling of bids submitted in response to public invitation.
- (e) Evaluation of bids
- (f) Awarding of contracts
- (g) Administration of contracts –
  - (i) After approval of a bid, the Accounting Officer and the bidder must enter into a written agreement.
- (h) Proper record keeping –
  - (i) Original / legal copies of written contracts and agreements must be kept in a secure place for reference purposes.
- (j) Feedback to contractor who participated to the bid by publicizing the awarded contract on the municipal website.

## **21. Bid documentation for competitive bids**

- (1) the criteria to which bid documentation for a competitive bidding process must comply, must –
  - (a) Take into account –
    - (i) The general conditions of contract and any special conditions of contract, if specified;
    - (ii) Any Treasury guidelines on bid documentation; and
    - (iii) The requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) Include the evaluation and adjudication criteria, including any criteria required by other applicable legislation;

- (c) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) If the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish –
  - (i) If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
    - (aa) for the past three years; or
    - (bb) since their establishment if established during the past three years;
  - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
  - (iii) Particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
  - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic;
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;

## **22. Public invitation for competitive bids**

- (1) the procedure for the invitation of competitive bids is as follows:-
  - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Bid Bulletin); and
  - (b) The information contained in a public advertisement, must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or not less than 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to paragraph 23(2) of this Policy;
    - (ii) A statement that bids may only be submitted on the bid documentation provided by the municipality;
    - (iii) Date, time and venue of any proposed site meetings or briefing sessions; and
    - (iv) A statement stipulating that bids submitted late and bidders coming late for site meetings will be disqualified.
- (2) The Accounting Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

### **23. Procedure for handling, opening and recording of bids**

- (1) the procedures for the handling, opening and recording of bids, are as follows:-
  - (a) Bids –
    - (i) Must be opened only in public;
    - (ii) Must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
    - (iii) Bid received after the closing time should not be considered and returned unopened immediately.
  - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
  - (c) The Accounting Officer must –
    - (i) record in a register all bids received in time;
    - (ii) make the register available for public inspection; and
    - (iii) publish the entries in the register and the bid results on the website.

### **24. Negotiations with preferred bidders**

- 1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
  - (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- 2) Minutes of such negotiations must be kept for record purposes and as far as practical be made part of the final contract.

### **25. Two-stage bidding process**

- (1) A two-stage bidding process is allowed for –
  - (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

## **26. Committee system for competitive bids**

- (1) The following committees are hereby established -
  - (a) bid specification committees;
  - (b) bid evaluation committees; and
  - (c) a bid adjudication committee.
- (2) The committee should be reviewed annually.
- (2) The Accounting Officer is required to appoint the members of each committee, taking into account section 117 of the Act.
- (3) The Accounting Officer is required to appoint a neutral or independent observer to attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –
  - (a) paragraphs 27, 28 and 29 of this Policy; and
  - (b) any other applicable legislation.

## **27. Bid specification committees**

- (1) In conjunction with the head of the department the bid specification committee must compile the specifications for the procurement of goods or services.
- (2) Specifications –
  - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) where possible, must be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2011; and
  - (g) must be approved by the Accounting Officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.

- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

## **28. Bid Evaluation Committees**

- (1) The bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system set out in terms of paragraph 28(2)(f).
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) The bid evaluation committee must as far as possible be composed of–
- (a) officials from departments requiring the goods or services; and
  - (b) at least one Supply Chain Management practitioner of the Municipality.

## **29. Bid adjudication committees**

- (1) The bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or
    - (ii) make another recommendation to the Accounting Officer how to proceed with the relevant procurement.
- (2) The bid adjudication committee must consist of at least four senior managers of the municipality which must include –
- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the Budget and Treasury Office reporting directly to the Chief Financial Officer and designated by the Chief Financial Officer; and
  - (b) at least one senior supply chain management practitioner who is an official of the municipality; and
  - (c) a technical expert in the relevant field who is an official, if such an expert exists.
- (3) The Accounting Officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

- (5) The chairperson of the bid adjudication committee may ask a member of the evaluation committee to explain the committee's recommendations during the adjudication process.
- (6) (a) if the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  - (ii) notify the Accounting Officer.
- (b) The Accounting Officer may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph 30(5)(a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (7) The Accounting Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (8) The Accounting Officer must comply with section 114 of the Act within 10 working days.

### **30. Procurement of banking services**

- (1) Banking services –
  - (a) must be procured through competitive bids;
  - (b) must be consistent with section 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than sixty (60) days from the date on which the advertisement is placed in a newspaper in terms of paragraph 23(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No 94 of 1990).

### **31. Procurement of IT related goods or services**

- (1) The Accounting Officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The Accounting Officer must notify SITA together with a motivation of the IT needs if –
  - (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such

comments must be submitted to the Council, the National Treasury, the relevant provincial treasury and the Auditor General.

### **32. Procurement of goods and services under contracts secured by other organs of state**

- (1) The Accounting Officer may procure goods or services under a contract secured by another organ of state, but only if –
  - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) there is no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Paragraphs (1)(c) and (d) do not apply if –
  - (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

### **33. Procurement of goods necessitating special safety arrangements**

- (1) The acquisition and storage of goods in bulk (other than water), which necessitate special safety arrangements, including gasses and fuel, should be avoided where ever possible.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the Accounting Officer.

### **34. Proudly SA Campaign**

A supply chain management policy must stipulate to what extent the municipality or municipal entity supports the Proudly SA Campaign.

### **35. Appointment of consultants**

- (1). A supply chain management policy may allow the accounting officer to procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2). A contract for the provision of consultancy services to a municipality or municipal entity must be procured through competitive bids if –
  - (a) the value of the contract exceeds R200 000 VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3). In addition to any requirements prescribed by these Regulations for competitive bids, bidders must furnish the municipality or municipal entity with particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
4. The municipality or municipal entity must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality

### **36. Deviation from, and ratification of minor breaches of, procurement processes**

- (1) The Accounting Officer may –
  - (a) dispense with the official procurement processes established by this Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only:
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos and food for such animals and/or botanical specimens for nature and game reserves; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The Accounting Officer must record the reasons for any deviations in terms of paragraphs 36(1)(a) and (b) of this Policy and report them to the next meeting of the Council and include as a note to the annual financial statements.
- (3) Paragraph 36(2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this Policy.

### **37. Unsolicited bids**

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.



- (2) The Accounting Officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the Accounting Officer.
- (3) If the Accounting Officer decides to consider an unsolicited bid that complies with paragraph 39(2) of this Policy, the decision must be made public in accordance with section 21(A) of the Municipal Systems Act, together with –
  - (a) reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) All written comments received pursuant to paragraph 39(3), including any responses from the unsolicited bidder, must be submitted to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the Accounting Officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account:
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Accounting Officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

### **38. Combating of abuse of supply chain management system**

- (1) In order to combat the abuse of the supply chain management system the Accounting Officer must –
  - (a) take all reasonable steps to prevent abuse of the supply chain management system;
  - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;

- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
- (d) reject any bid from a bidder –
  - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months unless satisfactory arrangements have been made to pay of the arrears or a consent to recover the arrears from all future payments to the bidder has been given; or
  - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Bid Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (Act No 12 of 2004).

(2) The Accounting Officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of paragraphs 39(1)(b)(ii), (e) or (f) of this Policy.

## (2) **Declaration**

3.1 For purpose of establishing control measures to eliminate fraud and corruption-

- a) A declaration schedule will form an integral part of all the Municipality's bid documents;
- b) Bidders must be required to complete the schedule as a prerequisite to submission of any bid;
- c) Lack of declarations or incomplete declaration can act as a disqualification.

3.2 Declaration of interest by councilors, officials, suppliers, service providers and consultants:

1. In order to obtain the disclosure of any interests that councilors, official, supplier, service provider or consultant may have with regard to a bid, the declaration of interest schedule must be completed prior to the award of a bid.
2. The declaration of interest must be completed by the following persons:-
  - a) All suppliers, service providers or consultants who are involved in the preparation of bid documentation and a bid reporting; and
  - b) Any other person who played a role in the preparation, specification, evaluation and approval of a bid and who has an interest in the award thereof.
  - c) The municipality reserves the right to vet any official, councilor or supplier who they deem necessary or believe that incorrect information is being supplied.

### ***Part 3: Logistics, Disposal, Risk and Performance Management***

#### **39. Logistics management**

The Accounting Officer must establish and implement an effective system of logistics management, which must include -

- (a) the monitoring of spending patterns on types or classes of goods and services which should, where practical, incorporate the coding of items to ensure that each item has a unique number for the purposes of monitoring;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
- (c) the placing of manual or electronic orders for all acquisitions;
- (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and are in accordance with the order, the general conditions of contract and specifications, where applicable, and that the price charged is as quoted in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets, including official vehicles, are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

#### 40. Disposal management

- (1) The Accounting Officer in conjunction with the Head of Department is responsible for the management of Council's assets which includes the disposal and maintenance thereof.
- (2) Over and above the conditions contained in this policy the processes described in the municipality's asset management policy must be adhere to by the Accounting Officer and Head of Departments.
- (3) The additional criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to section 14 and 90 of the Act, are as follows –
  - (a) Assets must be disposed of by–
    - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
    - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
    - (iii) selling the asset; or
    - (iv) destroying the asset.
- (4) The Accounting Officer must ensure that –
  - (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
  - (c) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment;
  - (d) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
  - (e) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
  - (f) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
  - (g) where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### **41. Risk management**

- (1) A supply chain management policy must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system
- (2) Risk management must include –
  - (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.
- (3) In order to reduce the risk on contract, the accounting officer must include the provision of sureties for the due performance on a contract and retention of a portion of moneys due to a contract.

#### **42. Performance management**

The Accounting Officer must ensure that an effective internal monitoring system is implemented in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the measurable performance objectives linked to and approved with the budget and the service delivery and budget implementation were achieved.

#### **Contract Management**

##### **(1) Service Level Agreements**

Contracts concluded for the procurement of goods and services should be made subject to the conclusion of a Service Level Agreements.

##### **(2) Extension/Expansion of Contracts**

Accounting Officer may expand or vary the contract by not more than 20 % for constructions related goods or services and infrastructure projects; 15 % for all other goods and services of the original value of the contract.

Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116 (3) of the MFMA which will be regarded as an amendment to the contract.

(3) **Orders**

Supplies should be delivered and services rendered only upon a written official order from the Municipality, and accounts should be rendered as indicated on the official order or in the contract, as the case may be.

(4) **Payment for Supplies and Services**

(1) Subject to any instructions issued with a contract or order, a contractor should be paid for supplies delivered and services rendered in accordance with the under-mentioned provisions:

- (a) On the basis of delivery into store or to another nominated destination, only after receipt of a detailed account and after delivery has been effected.
- (b) On the basis of delivered and erected, installed, etc., only after receipt of a detailed account supported by a certificate of satisfactory execution issued by a Municipality agent.
- (c) Payment should normally be effected within **30 days** of receipt of all the required documentation, which should be correct in every respect. Should a contractor indicate a special discount on his/her account provided payment is made within a certain time, every effort should be made to take advantage of such discount.
- (d) As a rule, payment is made to the contractor only. When payment is claimed by another party the latter must produce a written transfer, power of attorney or authorisation and, before payment is made, the contractor must confirm that the transfer, power of attorney or authorisation has been given by him/her and that payment may be claimed in terms thereof.

(5) **Remedies in case of death, sequestration, liquidation or judicial management**

- (a) In the event of the death of a contractor or the provision or final sequestration of his/her estate or of his/her cession or transfer of a contract without the approval of the Council or of the surrender of his/her estate or of his/her reaching a compromise with his/her creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, the

Council must, without prejudice to any other rights it may have, exercise any of the following:

- (b) Cancel the contract and accept any of the bids, which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has risen or may arise against the contractor in respect of supplies not delivered or work not carried out by him/her under the contract, and the Council shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrences until such claim has been satisfied; or
- (c) Allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expenses of the estate of the contractor to carry on with and complete the contract.

(6) **Contractor's Liability**

- (a) In the event of the contract being cancelled by the Council in the exercise of its rights in terms of these conditions, the contractor should be liable to pay to Council any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and Council should have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs have been determined, to retain such moneys or guarantee or any deposit as security for any loss which the Council may suffer or have suffered.

The contractor must be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent, otherwise, does not conform to any condition or requirement of the contract.

(7) **Transfer of Contracts**

The contractor must not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the Council.

## ***Part 4: Other matters***

### **43. Prohibition on awards to persons whose tax matters are not in order**

- (1) The Accounting Officer must ensure that, irrespective of the procurement process followed, no award above R 15 000 (VAT included) is given to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a provider or bidder, a tax clearance certificate from SARS

### **44. Prohibition on awards to persons in the service of the state**

The Accounting Officer must ensure that irrespective of the procurement process followed, no award may be made to a person –

- (a) who is in the service of the state; or
- (b) if that person is not a natural person, of which any director, manager, majority shareholder or stakeholder is a person in the service of the state; or
- (c) who is an advisor or consultant contracted with the municipality in respect of a contract that would cause a conflict of interest.

### **45. Awards to close family members of persons in the service of the state**

The notes to the annual financial statements must disclose particulars of any award of more than R2 000 (VAT included) to a person who is a spouse, life partner, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –

- (a) the name of that person;
- (b) the capacity in which that person is in the service of the state; and
- (c) the amount of the award.

### **46. Ethical standards**

(1) A code of ethical standards is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote –

- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

(2) An official or other role player involved in the implementation of this Supply Chain Management Policy –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350.00.
- (d) notwithstanding paragraph 46(2)(c), must declare to the Accounting Officer details of any reward, gift, favour, hospitality or other benefit



- promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the Accounting Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality;
  - (h) must assist the Accounting Officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the Accounting Officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
    - (i) any alleged fraud, corruption, favouritism or unfair conduct;
    - (ii) any alleged contravention of paragraph 48(1) of this Policy;
    - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of paragraphs 46(2)(d) and (e) -
- (a) must be recorded in a register which the Accounting Officer must keep for this purpose;
  - (b) by the Accounting Officer must be made to the Mayor of the municipality who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in Supply Chain Management.
- (5) A breach of the code of ethics adopted by the Municipality must be dealt with in accordance with schedule 2 of the Local Government: Municipal Systems Act, 2000.

#### **47. Inducements, rewards, gifts and favours to municipalities, officials and other role players**

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the municipality for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this Policy.

- (2) The Accounting Officer must promptly report any alleged contravention of paragraph 48(1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Paragraph 48(1) does not apply to gifts less than R350.00 in value.

#### **48. Sponsorships**

The Accounting Officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is –

- (a) a provider or prospective provider of goods or services; or
- (b) a recipient or prospective recipient of goods disposed or to be disposed.

#### **49. Objections and complaints**

Persons aggrieved by decisions or actions taken in the implementation of this Supply Chain Management System, may lodge within 14 days of the decision or action, a written objection or complaint against the decision or action.

#### **50. Resolution of disputes, objections, complaints and queries**

- (1) The Accounting Officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
  - (a) to assist in the resolution of disputes between the municipality and other persons regarding -
    - (i) any decisions or actions taken in the implementation of the supply chain management system; or
    - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
  - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The Accounting Officer, or another official designated by the Accounting Officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the Accounting Officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) no response is forthcoming within 60 days.

- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (4) This paragraph must not be read as affecting a person's rights to approach a court at any time.

#### **51. Contracts providing for compensation based on turnover**

If a service provider acts on behalf of the Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality must stipulate –

- (a) a cap on the compensation payable to the service provider; and
- (b) that such compensation must be performance based.

#### **52. Payment of sub-contractors or joint venture partners**

The Chief Financial Officer or an official designated by the Chief Financial Officer may consent to the direct payment of sub-contractors or joint venture partners by way of -

- (a) an approved cession; or
- (b) an agreement for direct payment.

#### **53. Extending or varying a contract**

- (1) Subject to paragraph 54(2), the municipality on its own initiative or upon receipt of an application from the person, body, organisation or corporation supplying goods or services to the municipality in terms of this Policy, may resolve to extend or vary a contract if –
  - (a) the circumstances as contemplated in paragraph 38(1)(a) prevail; or
  - (b) with due regard to administrative efficiency and effectiveness, the Accounting Officer deems it appropriate.
- (2) The municipality may not extend or vary a contract –
  - (a) more than once;
  - (b) for a period exceeding the duration of the original agreement; or
  - (c) for an amount exceeding the original bid value plus any adjustments in terms of the consumer price index.
- (3) Within one (1) month of the decision referred to in paragraph 54(1), the matters specified in paragraph 54(4) must be –
  - (a) published by the Municipality at least in an appropriate newspaper circulating within the boundaries of the municipality; and
  - (b) displayed at a prominent place that is designed for that purpose by the Municipality.
- (4) The matters to be published or displayed are –

- (a) the reasons for dispensing with the prescribed procedure;
  - (b) a summary of the requirements of the goods or services; and
  - (c) the details of the person, body, organisation or corporation supplying the goods or services.
- (5) The functions of the Accounting Officer in terms of paragraph 54 may not be assigned nor delegated.

#### **54. Local Economic Development**

For the purpose of Local Economic Development within the municipality, any construction contract that is awarded to a company that does not reside within the municipal area will be subjected to subcontract 30% of the contract value to a local company or business.

#### **55. Short title and commencement**

This Policy is called the "*Supply Chain Management Policy of the EMLM*" and takes effect on approval by Council.

## **PART B**

### **PREFERENTIAL PROCUREMENT POLICY**

#### **PREAMBLE**

**WHEREAS** Elias Motsoaledi Local Municipality (**EMLM**) aims to improve the quality of life of all citizens and to free the potential of each person within a framework facilitating service delivery, and effective governance; the Council recognized the need for transparent procedures in the application of preferential procurement;

**AND WHEREAS** economic development plays a crucial role in the creation of a prosperous, equitable, stable and democratic society with decent work and living standards for all in the context of equality in ownership, skills and access to opportunities;

**NOW THEREFORE** the Council of the **EMLM** resolves in terms of the Preferential Procurement Policy Framework Act, No. 5 of 2000 to adopt the following preferential procurement policy for the municipality:

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1. Scope
2. Purpose
3. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting
4. prequalification criteria for preferential procurement
5. Tenders to be evaluated on functionality
6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million
7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
8. Local Production and content
9. Subcontracting as condition of tender
10. Criteria for breaking deadlock in scoring
11. Award of contracts to tenderers not scoring highest points
12. Subcontracting after award of tender
13. Cancellation of tender
14. Remedies

15. Short title.

**SCOPE**

1. This policy applies to all contracts for the provision of goods and services to by the municipality.

**PURPOSE**

2. The purpose of the policy is to provide a framework within which effect can be given to the principle of preferential procurement, while ensuring that fair, equitable, transparent, competitive and cost effective procurement practices are adhered to.

**OBJECTIVES**

3. The objectives of the policy are to:
  - (a) Provide clarity on the municipality's approach to preferential procurement.
  - (a) Provide access to contracts for historical disadvantaged individuals.
  - (c) Promote EME participation.
  - (d) Promote capacity development and skills transfer
  - (e) Promote job creation.
  - (f) Create an enabling contractual environment.

**4. Prequalification criteria for preferential procurement**

1.If an organ of state decides to apply pre-qualifying criteria to advance certain designated groups, that organ of state must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond(a) a tenderer having a stipulated minimum B-BBEE status level of contributor; (b) an EME or QSE; (c) a tenderer subcontracting a minimum of 30% to(i) an EME or QSE which is at least 51% owned by black people; (ii) an EME or QSE which is at least 51% owned by black people who are youth; (iii) an EME or QSE which is at least 51% owned by black people who are women; (iv) an EME or QSE which is at least 51% owned by black people with disabilities; (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships; (vi) a cooperative which is at least 51% owned by black people; (vii) an EME or QSE which is at least 51% owned by black people

who are military veterans; (viii) an EME or QSE. (2) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.

## 5. Tenders to be evaluated on functionality

- 1) An organ of state must state in the tender documents if the tender will be evaluated on functionality.
- (2) The evaluation criteria for measuring functionality must be objective.
- (3) The tender documents must specify
  - (a) the evaluation criteria for measuring functionality;
  - (b) the points for each criteria and, if any, each sub-criterion; and
  - (c) the minimum qualifying score for functionality.
- (4) The minimum qualifying score for functionality for a tender to be considered further
  - (a) must be determined separately for each tender; and
  - (b) may not be so
    - (i) low that it may jeopardise the quality of the required goods or services; or
    - (ii) high that it is unreasonably restrictive.
- (5) Points scored for functionality must be rounded off to the nearest two decimal places.
- (6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- (7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million 6.(1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

$$\text{Where } Ps = 80 \left[ 1 - \frac{Pt - Pmin}{Pmin} \right]$$

Ps = Points scored for price of tender under consideration;  
 Pt = Price of tender under consideration;  
 and Pmin = Price of lowest acceptable tender.

(2) The following table must be used to calculate the score out of 20 for BBEE:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6

<b>7</b>	<b>4</b>
<b>8</b>	<b>2</b>
Non-compliant contributor	<b>0</b>

- (3) A tenderer must submit proof of its B-BBEE status level of contributor.
- (4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but
  - (a) may only score points out of 80 for price; and
  - (b) scores 0 points out of 20 for B-BBEE.
- (5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- (6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).
- (7) The points scored must be rounded off to the nearest two decimal places.
- (8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.
- (9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.
- (b) The organs of state may
  - (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.



## 90/10 preference point system for acquisition of goods or services with Rand value above R50 million

7.1 The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

$$\text{Where } Ps = 90 \left[ 1 - \frac{Pt - Pmin}{Pmin} \right]$$

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmin = Price of lowest acceptable tender

(2) The following table must be used to calculate the points out of 10 for BBEE

B-BBEE Status Level of Contributor	Number of points (90/10 system)
1	10
2	9
3	6
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but

(a) may only score points out of 90 for price; and

(b) scores 0 points out of 10 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

- (9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.
- (b) The organs of state may-
- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
  - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
  - (iii) if the tenderer scoring the second **highest** points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender

## **Local production and content**

- 8.(1) The Department of Trade and Industry may, in consultation with the National Treasury
- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
  - (b) stipulate a minimum threshold for local production and content.
- (2) An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.
- (3) The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.
- (4)(a) If there is no designated sector, an organ of state may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- (b) The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- (5) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

## **Subcontracting as condition of tender**

- 9.(1) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.
- (2) If an organ of state applies subcontracting as contemplated in subregulation (1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-
- (a) an EME or QSE
  - (b) an EME or QSE which is at least 51% owned by black people;
  - (c) an EME or QSE which is at least 51% owned by black people who are youth;
  - (d) an EME or QSE which is at least 51% owned by black people who are women;
  - (e) an EME or QSE which is at least 51% owned by black people with disabilities;
  - (f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
  - (g) a cooperative which is at least 51% owned by black people;
  - (h) an EME or QSE which is at least 51% owned by black people who are military veterans; or
  - (i) more than one of the categories referred to in paragraphs (a) to (h).
- (3) The organ of state must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subregulation (2) from which the tenderer must select a supplier.

## **10. Criteria for breaking deadlock in scoring**

- (1) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.
- (2) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.
- (3) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.

## **11. Award of contracts to tenderers not scoring highest points**

- (1) A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the Act.
- (2) If an organ of state intends to apply objective criteria in terms of section 2(1)(f) of the Act, the organ of state must stipulate the objective criteria in the tender documents.

## **12. Subcontracting after award of tender**

- (1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.
- (2) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- (3) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## **13. Cancellation of tender**

- (1) An organ of state may, before the award of a tender, cancel a tender invitation if
  - (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - (b) funds are no longer available to cover the total envisaged expenditure;
  - (c) no acceptable tender is received; or
  - (d) there is a material irregularity in the tender process.
- (2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.
- (3) An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

## **14. Remedies**

- (1) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must
- (a) inform the tenderer accordingly;
  - (b) give the tenderer an opportunity to make representations within 14 days as to why
    - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
    - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
    - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
  - (c) if it concludes, after considering the representations referred to in subregulation (1)(b), that
    - (i) such false information was submitted by the tenderer
      - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
      - (bb) if applicable, claim damages from the tenderer; or
    - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- (2)(a) An organ of state must
- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);
  - (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
  - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
- (b) The National Treasury may request an organ of state to submit further information pertaining to subregulation (1) within a specified period.
- (3) The National Treasury must
- (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
  - (b) maintain and publish on its official website a list of restricted suppliers

## **SHORT TITLE**

- 15.** This part of the policy is called Elias Motsoaledi Local Municipality Preferential Procurement Policy.

**PART C**  
**SUPPLY CHAIN AND PREFERENTIAL PROCUREMENT GUIDELINES**

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## DEFINITIONS

1. For the purpose of this policy, unless the context indicates otherwise, any word or expression to which a meaning has been attached in the Act shall bear the same meaning and means:-
  - (1) “*acceptance of bid*” the award of a bid to a bid in response to his/her bid or price quotation;
  - (2) “*briefing notes*” update information or circular regarding the bid issued from time to time during the submission of bid phase to prospective bidders;
  - (3) “*Chief Financial Officer*” an officer of the municipality appointed as the Head of the Finance Department and includes any person:-
    - (a) acting in such position; and
    - (b) to whom the Chief Financial Officer has delegated a power, function or duty in respect of such a delegated power, function or duty;
  - (5) “*closing date*” the date specified in the bid documents for the receipt of the bid;
  - (6) “*closing time*” the time specified in the bid documents for the receipt of the bid;
  - (7) “*consortium*” any group of persons submitting a bid to provide services as required by the bid advertisement, irrespective of the existence of a formal agreement or arrangement between them or not, and consortia shall refer to the plural thereof;
  - (8) “*consultant*”: see “professional service provider”;
  - (9) “*contract*” the agreement between parties which is concluded when the Municipality accepts a bid/quotation submitted by a bidder;
  - (10) “*contractor*” any natural or legal person/company/closed corporation/firm/joint venture, whose bid has been accepted by the municipality and, for the purposes of this policy, shall include suppliers and service providers;
  - (11) “*Council*” or “*municipal council*” a municipal council referred to in section 18 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and for purposes of this policy, the municipal council of the Municipality of EMLM;
  - (12) “*delegated authority*” any person/persons/committee delegated with the authority to act for or on behalf of the municipality;

- (13) *“formal contract”* a written contract concluded between EMLM, signed by the authorized person (in terms of the Delegation of Authority) the Board, and the successful bidder, which contract embodies the terms and conditions of the bid
- (14) *“good performance”* that the contractor’s performance was above average and that the official would have no hesitation in recommending that contractor on another project;
- (15) *“goods”* those raw materials or commodities which are available for general sale;
- (16) *“implementing agent”* the decision maker/manager mandated by the municipality to implement projects and invite bids/quotations for procurement of any nature;
- (17) *“joint venture/consortium”* an association of persons/companies/closed corporations/firms formed for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (18) *“laws”* Includes the common law, all legislation (National, Provincial, Local and subordinate), regulations, ordinances, proclamations, guidelines and policies;
- (19) *“letter of acceptance”* the written letter indicating the acceptance of bid by EMLM;
- (20) *“local”* a Professional Service Provider with a permanent office in the area of jurisdiction of the municipality manned by a partner/director with adequate staff and resources to provide the majority of their services without outside support or assistance;
- (21) *“management”* in relation to an enterprise or business, an activity inclusive of control and performed on a daily basis by any person who is a principal executive officer of the enterprise/business, by whatever name that person may be designated, and whether or not that person is a director;
- (22) *“Municipal Manager”* the accounting officer appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No 117 of 1998) and being the head of administration and accounting officer in terms of section 55 of the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) and includes any person:-  
    (a) acting in such position; and  
    (b) to whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty;
- (23) *“panel of service providers”* the panel of service providers listed by EMLM for a specified period as preferred providers of supplies and services to EMLM;
- (24) *“preference”* the preference awarded to a bidder in the evaluation of his or her bid in accordance with the provisions of Preferential Procurement System as set out in paragraph 12;
- (25) *“principal”* a person in a firm who is a partner in a partnership, a sole proprietor, a director in a company established in terms of the Companies Act, or a member of a closed corporation registered in terms of the Closed Corporation Act;

- (26) “*prime contractor*” the legal entity with whom the municipality will contract;
- (27) “*professional services*” the provision on a fiduciary basis of services requiring knowledge based expertise;
- (28) “*professional services provider (consultant)*” any person or body corporate who is under contract to the municipality for the provision of Professional Services;
- (29) “*quotation*” a written offer which is not submitted in the form of a bid document prescribed by the municipality, but is never-the-less subject to a specification, conditions of purchase and any schedules and/or annexure such as drawings or plans, as applicable;
- (30) “*regulations*” the Preferential Procurement Regulations, 2011, pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000);
- (31) “*responsible agent*” those internal project managers and/or external consultants responsible for the administration of a contract;
- (32) “*responsive bid*” a bid which conforms to all the terms, conditions and specifications of the bid without material deviation or qualification;
- (33) “*service providers*” the service providers who have qualified for listing on the panel of service providers and remain to comply with the minimum requirements for listing on the panel;
- (34) “*services*” the provision of labour and/or work carried out by hand, or with the assistance of plant and equipment, including the input, as necessary, of knowledge based expertise;
- (35) “*small, medium and micro enterprises (EME’s)*” the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No 102 of 1996);
- (36) “*successful bidder*” the individual, organization or consortium whose bid has been accepted by EMLM;
- (37) “*bid*” a written offer on the bid documents prescribed by the municipality in response to an invitation to bid;
- (38) “*bidder*” any natural or legal person/company/closed corporation/firm submitting a bid or price quotation;
- (39) “*bid sum*” the amount stated on the bid documents prescribed by the Municipality;
- (40) “*the Act*” the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000); and



## **ACCESS TO BIDDING INFORMATION**

### **2.**

- (1) All potential bids must have access to bid information. A special effort must be made to ensure that bid information reaches prospective bidders.

#### **Proposed process**

- (a) The procurement officer must ensure that notices of all bids shall be advertised in the local press and placed on all notice boards and pay-points throughout the municipal area.
- (b) The national press shall be used where applicable.
- (c) Notice of bids and bid documents placed on municipal notice boards shall be in English.
- (d) Bid Advice Service (TAS) points, created in the department requiring the goods or services shall assist with technical translation and related matters if requested.
- (e) The format and lay-out of bid notices used, shall regularly be reviewed, standardised and made user-friendly.
- (f) Guidelines regarding the completion of bid documentation shall accompany small and medium bids.
- (g) An official's name and contact number/address shall be included in all contract documentation and bid notices for enquiry purposes.
- (h) Upon request TAS will make bid results and awards available to bidders, to evaluate their performance and competitiveness for future bids.
- (i) For transparency, all bid documents shall provide details of the adjudication criteria.

## **BID ADVICE SERVICES**

### **3.**

- (1) TAS's must be available to all potential bidders.

#### **Proposed process**

- (a) TAS shall be established within each department responsible for issuing and administering bids.
- (b) The function of these TAS's, *inter alia*, will be to:
  - (i) Provide general information on all matters related to Municipal bids as well as specific information relating to individual bids.
  - (ii) Where applicable, convene pre-bid site meetings to explain bid requirements and answer questions from prospective bidders.
  - (iii) Assist bidders in preparing bid submission forms, excluding pricing of bids.
  - (iv) Provide language interpretation.
- (c) Introduce or co-ordinate training sessions for prospective bidders regarding general matters related to municipal bids. Training sessions shall be held on a needs basis and adequate measures shall be taken to inform prospective bidders of such sessions.
- (d) Departments should interact and make use of other services and facilities offered by existing national TAS's, and should additionally identify national and local organisations and institutions that focus on the support and growth of small businesses, and establish a co-operative relationship.
- (e) Departmental TAS will not be full-time structures and will only react to requests for assistance. At minimum, departments shall make standing arrangements for access to necessary personnel as and when required.

## **DEVELOPMENT OF DATA-BASE AND SKILLS LIST**

### **4.**

- (1) A data-base (categorised list with details of business activity and location) of existing and prospective suppliers/bidders shall be established.

#### **Proposed process**

- (a) The data-base within the procurement division must be established under the control of the chief financial officer and shall be used to identify potential bidders.
- (b) Based on work done the data-base shall be updated on a regular basis, and shall be made available to all user-departments and to neighbouring municipalities/municipal entities.
- (c) The information contained on the data-base shall be accessible to any organisation/institution outside the municipality upon request to promote the potential opportunities for PDI's and EME's.
- (d) A monitoring system shall be implemented by the municipal manager to evaluate progress made regarding opportunities afforded to PDI's and EME's, and to evaluate/adjust the use of the data-base, within the municipality.
- (e) Details of all supplier's and service provider's bids received, adjudication points, bids awarded and completed must be recorded on the database.
- (f) Advertisements reflecting the municipality's intention to establish a database and inviting potential suppliers and service providers to register on the municipal database must be placed in national and local newspapers.

## **EVALUATION PROCEDURES FOR SUPPLIERS OR SERVICE PROVIDERS**

### **5.**

- (1) All applications of potential suppliers or service providers will be evaluated.
- (2) The purpose of the evaluation process is to assist as many possible suppliers to be placed on the database.

#### **Proposed process**

- (a) The evaluation of applications, received from suppliers or service providers to be placed on the municipality's database, will be done by the department requiring the goods or services.
- (b) Each department will establish an evaluation panel consisting of not less than three members of which one must be a senior manager.
- (c) All suppliers and service providers will be evaluated before being placed on the municipality's database.
- (d) The criteria contained in annexure "C" will be used to determine whether a supplier or service provider qualifies to be placed on the supply or service provider database.
- (e) All successful applicants will be informed of the outcome.
- (f) Unsuccessful applicants must be assisted to complete the application form correctly to qualify.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R1 AND R2000.00**

### **6.**

- (1) The following procedures for the acquisition of goods and services with a value between R1 and R1000 must be followed.

#### **Proposed process**

- (a) A Head of department must apply to the Chief Financial Officer for a petty cash float.

- (b) Once approved the Chief Financial Officer will issue a cheque to a person nominated by the head of the department which will be responsible for petty cash transactions.
- (c) The responsible person will cash the cheque and keep the cash in a safety box which must be locked away in a safe at the end of each working day.
- (d) Sundry requirements to a maximum value of R1000.00 may be purchased from the petty cash float.
- (e) The responsible person will obtain verbal quotes and do the purchases.
- (f) The responsible person must at all times ensure that the municipality received values for money spend.
- (g) A monthly reconciliation report from each manager must be provided to the chief financial officer, including –
  - (i) the total amount of petty cash purchases for that month; and
- 20. receipts and appropriate documents for each purchase.
- (h) On receipt of the petty cash reconciliation the chief financial officer will issue a new cheque to the value of the amount already spent.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R1001 AND R30 000**

### **7.**

- (1) The following procedures for the acquisition of goods and services with a value between R1001 and R30 000 must be followed.

#### **Proposed process**

- (a) Heads of departments or their delegates must complete and submit an official requisition form, to the official tasked with the procurement of goods and services in the department, indicating the estimated value of the goods or services,.
- (b) If the Head of Department is of the opinion that not enough suppliers are going to respond he/she may request the procurement official to phone suppliers to respond after obtaining the permission of the accounting officer.
- (c) The official will ensure that the requisition is valid and advertise the requirements on the municipal notice board and website.
- (d) At least three quotations must be obtained.
- (e) The official will summarise the quotations received and submit it to the head of the department for acceptance.
- (f) If the lowest quotation in terms of price is not accepted the head of the department must submit reasons for the non-acceptance and report the matter to the municipal manager who must make a final ruling.
- (g) An official order will be placed for all goods or services obtained.
- (h) On receipt of the goods a goods received note must be completed and signed by the head of department or his/her delegate.
- (i) After services have been performed the head of the department must certify that the service was performed satisfactory and value for money was obtained.
- (j) All invoices required must be submitted to the creditors department which will attach it to the original requisition, order and goods received document where after it will be submitted for approval by the head of department and payment.

## **PROCUREMENT OF GOODS OR SERVICES WITH A VALUE BETWEEN R30 001 AND R200 000**

**8.**

- (2) The following procedures for the acquiring of goods and services with an estimated price between R30 001 and R200 000 must be followed.

### **Proposed process**

- (a) Heads of departments or their delegates must complete and submit an official requisition form, to the official tasked with the procurement of goods and services in the department, indicating the estimated value of the goods or services.
- (b) If the Head of Department is of the opinion that not enough suppliers are going to respond he/she may request the procurement official to phone suppliers to respond after obtaining the permission of the accounting officer.
- (c) The official will ensure that the requisition is valid and advertise the requirements on the municipal notice boards and website.
- (d) At least three written quotations must be obtained from suppliers listed on the municipal database.
- (e) The quotations must be sealed and opened in the presence of the evaluation committee.
- (f) This invitation to quote must be in writing and advertised in the local press.
- (g) Only suppliers or service providers which previously have completed a preference certificate for quotations may be used.
- (h) The preference claimed must be applied for all quotations greater than R30 000.
- (i) Details of the quotations will be summarised on a summary sheet and submitted to the adjudication committee.
- (j) If the lowest quotation in terms of price and preference claimed is not accepted the adjudication committee must submit reasons for the non-acceptance and report the matter to the municipal manager who must make a final ruling.
- (k) An official order will be placed for all goods and services.
- (l) On receipt of the goods a goods received note will be compiled and signed by the head of department or his/her delegate.
- (m) After services have been performed the head of the department must certify that the service was performed satisfactory and value for money obtained.
- (n) All invoices will be submitted to the procurement department which will attach it to the original requisition, order and goods received documents where after it will be submitted for approval by the head of department and payment by the creditors section of the treasury department.

## **PROCUREMENT OF GOODS OR SERVICES WITH A PRICE VALUE OF MORE THAN R200 000**

**9.**

- (3) The following procedures for the acquiring of goods and services with an estimated price above R200 000 must be followed:

### **Proposed process**

- (a) A formal bid must be prepared.

- (b) The following guidelines in the preparation of bid documents must be followed:

### **LANGUAGE**

- (i) Bid documentation must be prepared in English.

## **STANDARD DOCUMENTATION**

### **10.**

#### **BIDDING DOCUMENTS**

- a) The following bidding documents, which have been amended are necessary in accordance with the prescripts of the Preferential Procurement Regulations, 2011:

**Municipal Bidding Documents (MBDs)** for use by all municipalities and municipal entities to which the MFMA apply.

No.	SBD / MBD Description	Document Number
1	Invitation to Bid	MBD 1
2	Application for Tax Clearance Certificate	MBD 2
3	Pricing Schedules	MBD 3.1,3.2 and 3.3
4	Declaration of Interest	MBD 4
5	Declaration for Procurement above R10 000 000	MBD 5
6	Preference claims in terms of the Preferential Procurement Regulations, 2011	MBD 6.1
7	Declaration Certificate for Local Content	MBD 6.2
8	Formal contracts	MBD 7.1, 7.2 and 7.3
9	Declaration of Bidder's past SCM practices	MBD 8
10	Certificate of Independent Bid Determination	MBD 9

- b) The AO should customize and utilize the bidding documents (SBDs or MBDs) by incorporating the institutions name, logo and contact details.
- c) Other changes to the MBDs, such as variations necessary to address specific contract and project issues, should be kept to a minimum. The standard wording for the Application for Tax Clearance Certificates MBD 2) should not be amended. The formal contract document (MBD 7.1 to 7.3) should not form part of the bidding documents issued to every prospective bidder, but should be made applicable only to the successful bidder after adjudication and award of the bid.
- d) The relevant MBDs must be utilized for procurement by means of written price quotations, advertised competitive bids or proposals.

## **DRAFTING OF BID DOCUMENTATION**

### **11.**

- (c) Irrespective of by whom the proposal to bid for supplies or services was initiated, the head of department with responsibility in relation to the required supplies or services, must prepare or oversee the preparation of the bid documentation.
- (d) The head of department must also prepare or oversee the preparation of a bid advertisement .

- (e) Bid documents must be available when bid advertisements are placed, but bid documents may not be issued prior to the placing of the bid advertisements.

#### **Site inspections or explanatory meetings**

- (f) Should it be a condition of the bid that a site inspection or explanatory meeting be attended by prospective bidders, this requirement as well as the place and time must be clearly stated in the bid advertisement.
- (g) Proper minutes must be taken of all information disclosed during the site inspection or explanatory meeting, and copies of these minutes should be made available to all interested parties that attended the relevant meeting.
- (h) Where the attendance of the site inspection or explanatory meeting is compulsory to the bid, bidders must be required to certify that they attended the site meeting or explanatory meeting and that they are fully aware of the scope of the bid.

#### **Costs and prices**

- (i) Bid prices must include delivery costs.
- (j) Prices should be fixed, but in the event of non-fixed prices being bided, the prices must be ascertainable and reasonable.
- (k) Unless otherwise determined, the costs of packing materials are for the account of the bidder and must be included in the bid price.

### **EVALUATION PROCEDURES FOR BIDS**

#### **12**

##### **General principles**

- 7.(1) In the evaluation of any bid, general constitutional principles and the requirements of administrative justice regulate and determine the validity of any process followed.
- (2) Section 217 of the Constitution of South Africa, Act 108 of 1996, sets out the basic criteria which applies to the procurement of supplies or services by the state, and requires it must do so in accordance with a system which is **fair, equitable and transparent, competitive and cost-effective**, and provides for categories of **preference** in the allocation of contracts, and the protection or advancement of persons, or categories of persons, **disadvantaged** by unfair discrimination.
- (3) From the provisions of section 217 specific criteria are easily ascertainable. It is also clear that these criteria require two distinct, yet inseparable legs to be present in any procurement process. The first leg, requires that fairness, equitability, transparency, competitiveness and cost-effectiveness be incorporated into any evaluation process. The second leg requires that the process make provision for preferential procurement.
- (4) The above accordingly requires that for any procurement process to be fair and equitable, the bid process must be open and transparent and the evaluation of bids must take place in accordance with identified criteria which are applied in an impartial and unbiased evaluation. In evaluating and applying the bid criteria to bids, the following considerations must be kept in mind:

## Fairness

- (a) The concept of fairness is not an immutable one and may change with the passage of time. Fairness is the generic umbrella concept under which all the other considerations reside as specific aspects of the element of fairness. Fairness however remains a creature of context, requiring consideration of all surrounding aspects to determine its presence or not. Despite its reluctance to be firmly grasped, basic requirements or examples of fairness can be identified.
- (b) The element of 'fairness' requires that bid documents have been fairly compiled and supplied to all bids. The parties involved in the evaluation process must deal fairly and justly with each bid submitted – i.e. what applies to the one, applies to the other.
- (c) The principle of fairness also incorporates the right to administrative justice into the evaluation process, requiring the absence of *mala fides*, fraud, bribery and other illegalities in the total procurement process.
- (d) Fairness further requires that the norms, criteria or weighting used in the evaluation process are objective and defensible and do not exclude or prejudice any bidder unfairly or unreasonably.
- (e) The value-orientated spirit of the Constitution should therefore pervade the whole process ensuring the fair and equitable treatment of all bidders. Administrative justice requires not only no bias in the process, but also demands that each bidder, successful or not, and where requested, be provided with reasons for the specific outcome.

## Equitability

- (f) Equitability incorporates the element of equality into procurement. Each bid should therefore, taking into account the acceptability and compliance of the bid, be treated equally and equitably.
- (g) This requires that evaluation criterion, weighting system and the measurement of compliance with the bid documentation to be applied equally in the evaluation of each bid. Failure to do so opens the door to unequal treatment and an actionable violation of the equitability principle.
- (h) Risks of infringement of the equitability principle can also be found in the provision of an unequal opportunity to certain bidders to amend or vary a bid, inequality being present in the failure to afford a similar opportunity to other bidders who could potentially amend their bids to a competitive level.

## Transparency

- (i) Transparency relates to the general principle of administrative justice requiring any bid evaluation process to be open and transparent. Section 195 of the Constitution also underwrites this principle by requiring a sound public administration where the principle of openness and transparency are advanced.

- (j) Accordingly, the evaluation process must be sufficiently open to bidders, to afford bidders where required, sufficient feedback regarding the bid evaluation, short listing of bidders, reasons for disqualification, and the awarding of the bid. This approach is in line with the important fundamental right of access to information.

### **Competitiveness**

- (k) Any competition between bidders must be open and competitive. The procurement process should accordingly encourage effective competition through procurement methods suited to facilitate competition and provide EMLM with the best value for money.
- (l) Competition may however be influenced by preferences relating to the advancement of persons, or categories of persons, disadvantaged by unfair discrimination, locally based contractors or EME's. Such variation from the principle of open competition is justifiable as a remedial step towards the rectification and empowerment of persons previously disadvantaged, the strengthening of local suppliers and providers and the establishment of capacity for EME's.
- (m) Open competition may further be enhanced by ensuring that the potential pool of bidders is not arbitrarily restricted, unless such restriction is due to providing bid advertisements to service providers listed on the service provider panel only. Competition should further be enhanced by providing bidders with reasonable notification of bid opportunities and adequate time within which to bid. Costs involved in bidding should also not be so high as to deter potential bidders.

### **Cost-effectiveness**

- (n) Cost-effectiveness relates to the 'value for money'-analysis. Price alone is not always the best or most reliable indicator of value for money. Price as a norm can lead to rigid and inflexible consideration of bids, with the lowest bid more often than not, not being the best. The inherent challenge therefore, is to achieve affordability and a net benefit to EMLM by considering all relevant costs and benefits involved in the bid.
- (o) However, where lower bids are passed over, the reasons for doing so must be reasonable and accountable, and may require deviations from the bid specifications or shortcomings in quality, availability or compatibility to be highlighted. This though will be deemed necessary only in very exceptional circumstances and strictly in accordance with the PPPFA's regulation 9.

### **Ultra vires**

- (p) An important aspect and incorporated in the general principle of legality of all bids is that of *ultra vires*, which requires that the calling of the bid be duly authorized. The bid process must take place within the Policy framework and be conducted



with the necessary approvals by the authorized bodies or officials having been obtained.

- **DISCOUNTS**

- a) When calculating comparative prices:
- b) Unconditional discounts must be taken into account for evaluation purposes; and
- c) Conditional discounts must not be taken into account for evaluation purposes but should be implemented when payment is effected.

## **SUB-CONTRACTING**

13

- a) A bidder must not be awarded the points for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- b) A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- c) In relation to a designated sector, a contractor must not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

## **EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION**

14.

Bids invited on the basis of functionality as a criterion must be evaluated in two stages – first functionality must be assessed and then in accordance with the 80/20 or 90/10 preference point system. The evaluation must be done as follows:

- **First stage – Evaluation of functionality**

- Bids must be evaluated in terms of the evaluation criteria embodied in the bid documents. The amendment of evaluation criteria, weights, applicable values and/or the minimum qualifying score for functionality after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality.
- Bids that fail to achieve the minimum qualifying score for functionality must be disqualified.
- Score sheets should be prepared and provided to panel members to evaluate the bids.
- The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation as indicated in the bid documents.
- Each panel member should after thorough evaluation independently award his / her own value to each individual criterion.
- Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.

- If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
  - a. The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria;
  - b. The scores for each criterion should be added to obtain the total score; and
  - c. The following formula should be used to convert the total score to percentage for functionality:

$$Ps = Ms/So * 100$$

where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms = maximum possible score

- The percentage of each panel member should be added and divided by the number of panel members to establish the average percentage obtained by each bidder for functionality.

#### • **Second stage – Evaluation in terms of the 80/20 or 90/10 preference point systems**

- Only bids that achieve the minimum qualifying score / percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].

### **EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT**

#### **15.**

Bids that were invited on the basis of local production and content should be evaluated by following a two-stage bidding process:

#### • **First stage – Evaluation in terms of the stipulated minimum threshold for local production and content**

- Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as this may jeopardise the fairness of the process.
- A bid will be disqualified if: the bidder fails to achieve the stipulated minimum threshold for local production and content; and. the Declaration Certificate for Local Content (MBD 6.2).
- The local content (LC) as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 201x as indicated in paragraph 8. above.
- AO must verify the accuracy of the rates of exchange quoted by them bidder in paragraph 4 of the Declaration Certificate for Local Content (MBD 6.2)

#### • **Second stage - Evaluation in terms of the 80/20 or 90/10 preference point systems**

- Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further in accordance with the 80/20 or 90/10 preference point systems prescribed in Preferential Procurement Regulations. [Guidance on the evaluation of bids in terms of the 80/20 or 90/10 preference points systems is provided in paragraph 14 of this Policy].

- Where appropriate, prices may be negotiated only with short listed or preferred bidders. Such negotiations must not prejudice any other bidders.

## PREFERENCE POINT SYSTEM

### 16.

(1) The EMLM's procurement policy is constructed around the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and the Regulations of 2011. This Act and Regulations requires that the preference point system to be as follows:

- The 80/20 preference point system is applicable to bids\* with a Rand value equal to, or above R30 000 and up to a Rand value of R1 million (all applicable taxes included). Institutions may apply the 80/20 preference point system to price quotations with a value less than R30 000 if and when appropriate.
- The 90/10 preference point system is applicable to bids with a Rand value above R1 million (all applicable taxes included).
- The prescribed threshold values within which the AO may procure services, works or goods by means of petty cash, verbal / written price quotations or advertised competitive bids are not affected by the Preferential Procurement Regulations, 2011 which is referred to as tenders in the PPPFA and the Preferential Procurement Regulations, 2011 include advertised competitive bids, written price quotations or proposals.

#### • Step 1: Calculation of points for price

- The PPPFA prescribes that the lowest acceptable bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis.
- The formulae to be utilised in calculating points scored for price are as follows:

***80/20 Preference point system [(for acquisition of services, works or goods up to a Rand value of R1million) (all applicable taxes included)]***

$$Ps = 80 \left[ 1 - \frac{Pt - Pmin}{Pmin} \right]$$

Where

Ps = Points scored for comparative price of bid or offer under consideration

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

***90/10 Preference point system [(for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)]***

$$Ps = 90 \left[ 1 - \frac{Pt - Pmin}{Pmin} \right]$$

Where

Ps = Points scored for comparative price of bid or offer under consideration

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

- Points scored must be rounded off to the nearest 2 decimal places.

• **Step 2: Calculation of points for B-BBEE status level of contributor**

- Points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>	<b>Number of points (80/20 system)</b>
<b>1</b>	<b>10</b>	<b>20</b>
<b>2</b>	<b>9</b>	<b>18</b>
<b>3</b>	<b>8</b>	<b>16</b>
<b>4</b>	<b>5</b>	<b>12</b>
<b>5</b>	<b>4</b>	<b>8</b>
<b>6</b>	<b>3</b>	<b>6</b>
<b>7</b>	<b>2</b>	<b>4</b>
<b>8</b>	<b>1</b>	<b>2</b>
Non-compliant contributor	<b>0</b>	<b>0</b>

- A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum of 10 or 20 points respectively for B-BBEE.
- Calculation of total points scored for price and B-BBEE status level of contribution, the points scored for price must be added to the points scored for B-BBEE status level of contribution to obtain the bidder's total points scored out of 100.

**EVALUATION OF BIDS THAT SCORED EQUAL POINTS**

**17.**

- a) In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.
- b) If two or more bids have equal points, including equal preference points for BBEE, the successful bid must be the one scoring the highest score for functionality, if functionality is part of the evaluation process.
- c) In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

**CANCELLATION AND RE-INVITATION OF BIDS**

**18.**

- a) In the application of the 80/20 preference point system, if **all** bids received exceed R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s) received are within the R1 000 000 threshold, all bids received must be evaluated on the 80/20 preference point system.
- b) In the application of the 90/10 preference point system, if **all** bids received are equal to or below R1 000 000, the bid must be cancelled. If one or more of the acceptable bid(s)

received are above the R1 000 000 threshold, all bids received must be evaluated on the 90/10 preference point system.

- c) If a bid was cancelled in terms of paragraph 15.1 or 15.2, the correct preference point system must be stipulated in the bid documents of the re-invited bid.
- d) The AO may, prior to the award of a bid, cancel the bid if:
- e) Due to changed circumstances, there is no longer a need for the services, works or goods requested. The AO must ensure that only goods, services or works that are required to fulfil the needs of the institution are procured]; or
- f) Funds are no longer available to cover the total envisaged expenditure. [AO must ensure that the budgetary provisions exist]; or
- g) No acceptable bids are received. [If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids].

## **AWARD OF CONTRACTS**

### **19.**

- a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.  
The reasons for such a decision must be approved and recorded for audit purposes and must be defensible in a court of law.

## **REMEDIES, TAX CLEARANCE,**

### **20.**

#### **20.1 REMEDIES**

- b) AO must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- c) The institution may, in addition to any other remedy that it may have against the bidder or person:
  - Disqualify the bidder or person from the bidding process;
  - Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and
  - Forward the matter for criminal prosecution.
- d) The municipality should involve its legal services when any of the remedies are applied.
- e) The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

#### **20.2 TAX CLEARANCE**

- a) No bid may be awarded to any bidder whose tax matters have not been declared by the SARS to be in order.